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SUBJECT: STATES PARTIES FACE OBSTACLES IN EFFORTS TO CREATE A NEW
INTERNATIONAL ANTICORRUPTION REVIEW MECHANISM

SUMMARY

¶1. The UN Office on Drugs and Crime (UNODC) hosted two intergovernmental expert working group meetings during the period August 25 to September 4 to help promote implementation of the UN Convention Against Corruption (UNCAC).

¶2. During the Review of Implementation Working Group on August 25 to September 2, experts from 82 countries made a final formal attempt prior to a November deadline to finalize draft terms of reference for a new mechanism to review implementation of UNCAC. As in previous working group meetings, several countries (Egypt, China, Russia, Pakistan, and Iran) blocked consensus on adopting mechanism characteristics that are supported by a large portion of the States Parties. These characteristics include allowing the participation of civil society in the review process, public access to individual country review reports, the use of all sources of information during the course of country reviews, and site visits to the country under review. The U.S. remains isolated in its calls for restricting funding of the mechanism to voluntary contributions. A group of like-minded countries, (including the U.S., several EU countries, Mexico, Argentina, Nigeria, among others) have begun meeting to strategize and also contemplate next steps if we cannot meet the November deadline for establishing the review mechanism.

¶3. During the Technical Assistance Working Group (TA WG) on September 3-4, experts from 74 countries discussed ways to promote technical assistance for the implementation of the Convention. The session featured panel presentations by a mix of developing and donor countries, as well as UN agencies and civil society. This format afforded participants the opportunity to engage in a frank exchange of experiences with: (1) gap analyses to determine compliance with the UNCAC and associated technical assistance requirements, and (2) the provision and coordination of UNCAC-related technical assistance. The UNODC also provided an overview of its efforts to facilitate technical assistance, including the development of a matrix of needs and a database of anti-corruption experts. The next meeting of the TA WG will occur during the 3rd Conference of the States Parties (November 9-11) in Doha, Qatar. END SUMMARY.

CREATING A NEW REVIEW PROCESS

¶4. Experts from 82 Member States met on August 25 to September 2 to continue their efforts to develop terms of reference for a new mechanism to review implementation of UNCAC (Ref A). The goal of this Review of Implementation Working Group is to finalize terms of reference that can be adopted by the 3rd Conference of the States Parties (COSP) scheduled for November 9-13 in Doha. The U.S. was represented by John Brandolino, INL Senior Advisor to UNVIE, and Jane Ley, Deputy Director for the U.S. Office of Government Ethics.

Participants reviewed draft terms of reference for the mechanism that covered issues such as the purposes of the review process, how the review process will be conducted and funded, and what body or bodies will oversee the review process.

SIGNIFICANT ROADBLOCKS

¶5. A small group of countries (China, Russia, Egypt, Iran and Pakistan) blocked consensus on several key terms of reference. These countries believe that the primary goal of the review process will be to help States Parties to implement their obligations pursuant to the Convention. Thus, they are demanding that the State Party under review should have total control over all information used or produced during individual country reviews. Under their vision, individual country reports would not be made accessible to the public or other States Parties, and civil society would have no role or input into the mechanism. They would also prohibit site visits to States Parties under review. EU, U.S. and most other G-77 countries disagree with this vision, and have advocated for a more thorough and transparent process, including public access to reports, formal input from civil society into individual reviews, and site visits.

¶6. Given the differences, little progress was made on the 36 (of 47 total) paragraphs of the terms of reference covered during the seven-day session. Many paragraphs remain open or bracketed. To complicate matters, the Secretariat produced, at the request of Egypt, two relatively lengthy documents containing draft supplementary guidelines for the review process and a blueprint for individual country review reports. Egypt, China and Russia insisted that these supplementary documents, in addition to the terms of

reference, be approved by the COSP in November, thus adding significantly to the already pressing workload of negotiators.

¶7. A group of like-minded countries (including the U.S., several EU countries, Nigeria, Singapore, Mexico, Peru, Argentina, Japan, and Canada) met several times on the margins to determine how to work together as a bloc to move reluctant countries to adopt our vision of a review mechanism. At the suggestion of several countries, the U.S. produced a potential "compromise package" that was discussed during the week, but ultimately shelved until further informal consultations were finalized in late September. Sweden and Argentina, who play a key role in Vienna, felt it was too early to discuss compromise. However, many other attending delegations expressed privately their view that a compromise package was clearly necessary given the complexities of the terms of reference and the little time between now and the November COSP.

¶8. Several key countries fear that the issue of how the mechanism will be financed has the potential to drive a wedge between like-minded countries and the U.S. At this moment, the U.S. is the only vocal State Party advocating the use of only voluntary contributions to fund the activities of the mechanism. All other countries, including EU countries and G-77 (Comment: this is the only common position of the G-77 on the mechanism. End Comment), have expressed support for UN Regular Budget funding. Even Japan, a usual ally on financing issues at the UN, intervened to state its openness to a mix of UN Regular Budget funding and voluntary contributions. During the session, the Secretariat produced cost estimates for the first year of operation for the mechanism. While these numbers will obviously change depending upon the final agreed-upon form of the mechanism, the estimated total for translations, meetings, personnel, communications, equipment, and 20 site visits was USD\$2,786,000.

TECHNICAL ASSISTANCE

¶9. Experts from 74 Member States met again on September 3-4 for the Working Group on Technical Assistance (TA WG) to discuss ways to promote technical assistance for the implementation of the Convention. The U.S. was represented by Christine Cline, INL, and John Brandolino, INL Senior Advisor to UNVIE.

¶10. For the first time, the TA WG featured panel presentations by a mix of developing and donor countries, as well as UN agencies and civil society. The panel presenters focused on: (1) experience with internal gap analyses to determine compliance with the UNCAC and associated technical assistance requirements and (2) experience with the provision and coordination of UNCAC-related technical assistance. This format afforded attendees the opportunity to engage in a frank exchange of experiences and produced an extensive dialogue amongst experts.

¶11. Notably, the presentations provided by representatives from Peru, Indonesia and Kenya highlighted the role that civil society played when each country respectively undertook an internal gap analysis of compliance with UNCAC. Showcasing the value-added of civil society remained in stark contrast to the positions of some countries like China, Egypt and Pakistan which sought to prevent any civil society input into the UNCAC review mechanism. On the margins of the TA WG, Peru indicated that its emphasis on civil society was deliberate in order to make an effort to assuage such concerns.

¶12. The UNODC also provided an overview of the activities it has undertaken as a catalyst for the provision of technical assistance. Among them, UNODC undertook an analysis of the responses it received via the UNCAC self-assessment checklist and the technical assistance needs contained therein. It further distributed a matrix of these technical assistance needs organized on a country-by-country basis. (Comment: USDEL will circulate the matrix of needs identified to USAID and within the State Department. End Comment) UNODC has also developed a database of anti-corruption experts, which will be used to match requests for UNCAC assistance with those experts who may be well positioned to provide advice. USDEL endorsed the database and confirmed its willingness to nominate experts for inclusion in it. USDEL, along with other donor countries, also emphasized the importance of in-country coordination and dialogue between technical assistance providers and recipients, rather than a centrally-managed and UNODC-driven process.

¶13. The next meeting of the UNCAC TA WG will occur during the 3rd COSP. Due to the success of the panel presentations, the TA WG recommended that this format be replicated at the next session. At this time, attendees will also need to consider whether the mandate for the TA WG should be extended.

COMMENTS

¶14. A defining moment during the Review of Implementation Working Group occurred on the penultimate day, when Egypt called for reopening an already hard-fought and closed paragraph to add a requirement that all dialogue during country reviews be conducted via formal diplomatic channels. Such a requirement would basically render all reviews unworkable. Given the breadth of the issues and details that need to be clarified over the next two months, negotiations would be difficult enough assuming that everyone desired adoption of a UNCAC review mechanism. However, it is becoming evident that some countries, particularly China and possibly Egypt, are content with seeing adoption postponed until the 4th COSP in 2011, thus making the task even more challenging.

¶15. Argentina plans to continue informal negotiations in Vienna in late September. While we will participate wholeheartedly, we are not optimistic that informal negotiating sessions in Vienna, which have been tried in the past, will bridge the existing gaps. We agree with several like-minded countries that, in addition to defining a common vision for moving forward, we need to discuss potential next steps if we cannot agree to a review process during the 3rd COSP in November. In the meantime, INL intends to reach out to relevant capitals and make a final push to bring reluctant countries into the fold.

¶16. In contrast, the TA WG was devoid of the political overtones that dominated the discussions of the review mechanism. The attendance of technical assistance experts, the format of the TA WG, and the absence of Egypt and Pakistan proved to be the main factors in avoiding an ideological discussion. INL will continue to reach out informally with other donors in advance of the 3rd COSP in order to refine themes and practical commitments for inclusion in any

decision on technical assistance to be adopted by the COSP. END
COMMENT

DAVIES